



Conowingo Hydroelectric Project - Section 401 WQC Reconsideration

What You Need to Know

The Maryland Department of the Environment (MDE or Department) is continuing its administrative review of the Clean Water Act, Section 401 Water Quality Certification (WQC) 17-WQC-02 issued to Constellation Energy Generation, LLC (Constellation (formerly Exelon)) in 2018. Under this process known as Reconsideration, the Department will be reviewing its 2018 WQC decision and associated conditions as related to Maryland's authority under the Clean Water Act and state law. MDE will make a decision on the Reconsideration at the conclusion of the process.

MDE will provide the public with the ability to submit limited comments on the relicensing of the Conowingo Hydroelectric Project. Please visit MDE's Wetlands and Waterways Protection Program [Conowingo Dam Projects](#) website for updates and for more information.

401 Water Quality Certification

Under Section 401 of the federal Clean Water Act, a WQC is required prior to issuance of a federal license or permit for an activity or operation which may result in a discharge to a water of the United States to ensure protection of a state's water quality. Constellation requested a WQC from the Department as part of the federal relicensing of the Conowingo Hydroelectric Project (located on the Susquehanna River) by the [Federal Energy Regulatory Commission](#) (FERC). On April 27, 2018, the Department granted a WQC with conditions to Constellation. The WQC included conditions addressing water quality impacts associated with the dam, including: fish passage; sediment transport; nutrients; changes to the flow regime; trash and debris management; and the need for adaptive management over the term of the FERC license. By issuing the WQC, the State of Maryland certified that the activity would not violate Maryland's water quality standards provided that all conditions in the WQC are met.

Legal Challenges

The Department began the Reconsideration process in response to timely filed requests for administrative review of the certification in 2018. The Reconsideration process was initiated in 2018 with the "Protective Petition for Reconsideration and Administrative Appeal" submitted by Constellation and the "Administrative Appeal of Final Decision To Issue Clean Water Act Section 401 Certification for the Conowingo



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Hydroelectric Project” submitted by Stewards of the Lower Susquehanna, d/b/a Lower Susquehanna Riverkeeper Association, and Waterkeepers Chesapeake. Both of these submissions requested reconsideration of the certification by the Department in accordance with COMAR 26.08.02.10F(4).

In October 2019, MDE and Constellation entered into a water quality settlement agreement which contained agreed-upon proposed FERC license articles pertaining to water quality issues. On March 19, 2021 FERC issued a license incorporating certain terms and conditions of the settlement; this license was subsequently challenged in the U.S. Court of Appeals for the D.C. Circuit. On December 20, 2022, the D.C. Circuit ordered that the FERC license be vacated, in part to allow completion of the administrative and judicial review interrupted by the settlement. As a regulatory agency, and under the court’s opinion, MDE is required to continue the administrative review of the challenged 2018 Certification and complete the Reconsideration process. In light of the D.C. Circuit’s decision, administrative review by MDE has resumed. This process will conclude once MDE has considered all information relevant to the decision.

WQC Reconsideration Process

MDE is considering the documents and materials submitted by the parties to the Reconsideration, as well as public comments provided as part of the limited public notice, and the MDE WQC record. Once MDE has completed its review a decision on Reconsideration will be made. If a party to the Reconsideration is aggrieved by the decision of MDE they may seek a Contested Case Hearing on the matter at the Office of Administrative Hearings. If any party remains aggrieved after the Contested Case Hearing decision, they may seek a judicial review of the matter in Circuit Court.